



Comptroller General
of the United States

1332610

Washington, D.C. 20548

Decision

Matter of: Ensign Dean A. Barsaleau

File: B-252857

Date: October 26, 1993

DIGEST

Member's orders were modified on March 29, 1991, and the member was verbally informed of them on April 8, 1991 making Norfolk, Virginia, his permanent duty rather than temporary duty station. However, the modified orders were not received by his new duty station until June 1991. Member continued to receive per diem until June 1991. Since per diem is not payable at permanent duty station and member was aware that he was not entitled to per diem, waiver of debt because of erroneous payment may not be granted.

DECISION

This action is in response to a request for reconsideration from Ensign Dean A. Barsaleau for waiver of his debt of \$4,339.40 which arose when he received advanced travel expenses to which he was not entitled after issuance of an order modification which changed his temporary duty station to his permanent duty station. It is our view that Ensign Barsaleau was aware that modifying orders had been issued and he was not entitled to per diem. Thus, waiver is not appropriate under the circumstances.

Senior Chief Dean A. Barsaleau was stationed at Vallejo, California. On July 30, 1990, he was issued travel orders authorizing him to perform temporary duty for training to attend the Senior Enlisted Academy in Newport, Rhode Island. He was also ordered to temporary duty in Norfolk, Virginia, from March 25, 1991 to July 17, 1991, following his training in Rhode Island. These orders authorized an advance travel payment of \$7,111.10.

While at the Senior Enlisted Academy, he was selected as a limited duty officer and was promoted to Ensign. As a result of his selection, his orders were modified to change Norfolk, Virginia to his permanent duty station, which made him ineligible to receive per diem in Norfolk. The orders were issued on March 29, 1991. Ensign Barsaleau contacted the Naval Military Personnel Command and was verbally informed of his orders on April 8, 1991. Shortly

thereafter, it appears that he notified his new command that the order modification was issued.

Ensign Barsaleau received a copy of the order on June 5, 1991. He forwarded it to the new command in early June 1991. However, since the order was dated March 29, 1991, Ensign Barsaleau was informed that he was ineligible for per diem during the period after March 29. As a result he became indebted to the government for \$4,339.40, since no per diem entitlement existed to affect the travel advances. This represents the amount advanced to him for the period between March 29 and July 17, 1991.

The Navy allowed partial waiver of the debt. Travel expenses advanced to Ensign Barsaleau for the period through April 8, 1991, when he was informed of his permanent change of station, totaling \$272.00, were waived. The remainder, \$4,067.40, was not waived since Ensign Barsaleau had been informed that his orders had been modified. The Navy found that he should have been aware that his entitlement to per diem had ceased and he should not reasonably have expected to retain the per diem advance. Our Claims Group, by settlement dated June 18, 1992, upheld the partial waiver and held that waiver of the remainder was not appropriate since Ensign Barsaleau was aware that the order modification had been issued.

On appeal, Ensign Barsaleau contends that he was entitled to per diem until he received the order modification on June 5, 1991, and that he took all steps possible to avoid the erroneous payment.

In his appeal, reference is made to Paragraph U4102-I of the Joint Federal Travel Regulations (JFTR) which provides that a member who receives permanent change of station orders at his temporary duty station designating the temporary duty station as the new permanent duty station is not entitled to per diem at that station beginning on the date the PCS orders are received.

As noted above Ensign Barsaleau was advised on April 8, 1991, that orders dated March 29, 1991, had been issued designating Norfolk as his permanent station. Thus, he received official notification that his permanent station was Norfolk and the fact that the written orders did not arrive until a later date had no bearing on his entitlement. A member is not entitled to temporary duty allowances for duty performed at his permanent station. See in this regard B-171093, Dec. 11, 1970, wherein we held that a member whose orders were not issued until July, but who had been advised of the change in his permanent duty station in May, and had actually reported for duty at the new station, was not entitled to per diem after he was advised of the PCS. That

case also involved a regulation that cut off per diem for temporary duty upon "receipt" of permanent change of station orders. It concluded that the "principle of the regulation" was applicable to the member once he received official advice that permanent change of station orders were to be issued.

Section 2774 of title 10 of the U.S.C. provides that the Comptroller General or the Secretary concerned may not exercise his authority under this section to waive any claim if in his opinion there exists any indication of fault, fraud, misrepresentation or lack of good faith on the part of the member. The word "fault" as used in section 2774 has been interpreted by this Office as including more than a proven overt act or omission by the member. Thus, fault is considered to exist if in light of all the facts it is determined that the member should have known that an error existed and taken action to have it corrected.

In the present case, Ensign Barsaleau acknowledges that he knew his selection as a limited duty officer would impact upon his orders. He was officially advised of the order modification and knew that it had been issued. Upon his arrival at Norfolk, he informed his command and personnel office about the changed situation.

While he tried to obtain government quarters to avoid the cost of lodging, quarters were unavailable. He repeatedly contacted his personnel office to see whether or not the orders had arrived, but it was not until June 5, 1991, that he contacted the Naval Military Personnel Command (NMPC) and had them fax a copy of the orders which he forwarded to his personnel office during the week of June 10, 1991.

It is our view that Ensign Barsaleau knew that the orders modification had been issued changing Norfolk to his permanent duty station from April 8, 1991, and that he was no longer entitled to per diem and would have to refund a portion of the travel advance. We agree with the position taken by the Navy that he had a responsibility to have the matter resolved immediately. It is not clear why he waited until June 1991 to contact NMPC to have the matter corrected. However, in view of the circumstances, it cannot be said that he is without "fault" in the matter and thus waiver would not be appropriate. Accordingly, the denial of waiver of \$4,067.40 is affirmed.

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for